IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2248 OF 2000

1. Komalsingh Sonusingh Pardeshi]
Adult, Indian Inhabitant,]
having address as C/o. Mohansing]
Bayas, IPS (Retd.) Giznaz,]
Jawahar Housing Society, Civil]
Lines, Solapur]

2. M/s. Makhija & Vora]
Associates, a partnership firm]
duly registered under the Indian]
Partnership Act, 1932, and]
having its registered office at]
"Mangal Deep", Building, 471,]
16th Road, Khar, Bombay 400 052]..Petitioners

versus

1. State of Maharashtra]

2. The Additional Collector and]
Competent Authority, Pune Urban]
Agglomeration, Pune]

3. The Secretary,]
Housing and Special Assistance]
Department, Government of]
Maharashtra, Mantralaya,]
Mumbai 400 032]..Respondents

Shri R. Datar i/b. Shri R. D. Soni, Advocate for the Petitioners.

Shri V. S. Gokhale, AGP for the Respondents.

CORAM : R.M.S. KHANDEPARKAR &
NARESH H. PATIL, JJ.

DATE : 24TH AUGUST, 2006

ORAL JUDGMENT : (Per: R.M.S. Khandeparkar, J.) :

1. Heard.

2. The Petitioners seeks writ of mandamus for direction to the Respondents to reserve only 5% tenements for allotment to the Government nominees in Scheme No. 248 of the Petitioners and further declaration quashing the reservation for Government nominees over and above 5%, in view of the decision of the Apex Court delivered in the matter of **M/s. Shantistar Builders vs. Narayan Khimalal Totame and others reported in AIR 1990 Supreme Court 630.**

3. The Petitioner No.1 was the owner of the properties bearing various survey numbers situate at Lohegaon, Haveli, Pune. On return being filed under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976, (hereinafter referred to as "the said Act") in respect of the properties held by him, he was declared to be the excess holder under Section 8(4) of the said Act in respect of 2390.12 sq. metres of land. In accordance with the Government Resolution dated 27.8.1986 the Petitioner No.1 applied for exemption of the said property from the provisions of the said Act and for permission to construct tenements, which was granted while

sanctioning Scheme bearing No. 248, whereby the Petitioner No.1 was permitted to construct 50 tenements of 29.96 sq. meters and 20 tenements of 43.30 sq. meters, out of which 10% tenements were required to be reserved for Government nominees in terms of the said Scheme drawn under Sections 20 and 21 thereof. Accordingly, the agreement was entered into by the Petitioner No.1 with the developer in the year 1958 and the project was completed sometime in the year 1992-1994. On completion of the Project, the Petitioner No.1 called upon the Government to furnish details of the nominees to whom the flats were to be allotted so that the Petitioner No.1 could enter into the necessary agreement with them, simultaneously the Petitioner No.1 requested for reduction of the reservation to 5% from 10% in view of the decision of Apex Court in M/s. Shantistar's case (supra). Since the said request was not considered, petitioners filed the present petition.

4. It is the defence of the Respondents that the reservation of 10% of the flats for the Government nominees was after thorough correspondence between the parties and for an

Agreement to that effect by the petitioners. The entire scheme was sanctioned and the exemption was granted subject to the said condition being accepted by the Petitioners.

5. It is their further case that the decision of the Apex Court in M/s. Shantistar's case (supra) was delivered on 31.1.1990 and it would apply prospectively, while the scheme in question was approved in the year 1986 and, therefore, the decision will have no application to the said Scheme.

6. The learned Advocate for the petitioners also submitted that though the Scheme was floated in the year 1986, it was completed much after the delivery of decision by Apex Court in M/s. Shantistar's case and therefore such implementation of the Scheme being after the decision of the Apex Court, the same would apply to the case in hand.

7. Undoubtedly the decision in M/s. Shantistar's case was delivered on 31.1.1990. In the said decision, the Apex Court had held thus :

> **"Government nominees contemplated under the Code must belong to weaker sections of the society and shall also be subjected to the rule of one family - one flat. The number of Government nominees should not exceed 5% of the total accommodation available in any scheme."**

8. The law on the point that any declaration about the law by way of judicial pronouncement would apply prospectively unless there are specific directions to the contrary issued by the Apex Court in the decision in the matter is well settled. Undoubtedly there are no such directions for retrospective applicability of the said guide-line laid down by the Apex Court relating to 5% limitation for Government reservation in favour of Government nominees in a scheme in the said decision. Being so, the decision would apply prospectively as rightly submitted on behalf of the Respondents.

9. In the case in hand it is not in dispute that the scheme was approved in relation to the land which was declared to be in excess of the ceiling limit permissible for the Petitioners family. The scheme was approved pursuant to the request by the petitioner himself for construction of tenement in

such excess land. The Scheme was approved subject to certain conditions which were accepted by the petitioners without any reservation. The construction under the scheme had commenced knowing well that 10% of the tenements would be required to be reserved for allotment in favour of government nominees. Merely because such construction was completed after 1990 that would not at all enure the benefit to the petitioner that the reservation could not exceed 5%. Even the decision of the Apex Court laying down the guide-lines regarding restriction to the extent of 5% of the total accommodation being made available for government nominees in any scheme, specifically holds that "**Government nominees should not exceed 5%..".** It does not lay down that under no scheme already approved, the reservation made in favour of the government nominees should not be allowed to exceed 5% of the total accommodation.

10. The said decision clearly lays down that the guide-lines would apply to the Schemes which were to be approved after 31.1.1990.

11. Besides, in the case in hand, the restriction to the extent of 10% of the total

tenements in favour of government allottees was accepted by the petitioners without any reservation and knowing well the said requirement, the construction of the buildings was carried out. It is also a matter of record that immediately after the sanction of the scheme, the petitioner entered into an agreement for development with the petitioner No. 2 who is a developer. It is not the case of the petitioner that consequent to the decision of the Apex Court there was any novation in the agreement between the petitioner No.1 and Petitioner No.2 in relation to the construction activities.

12. In the background of all these facts, therefore it is too late for the petitioners to contend that merely on the basis of the decision in M/s. Shantistar's case that the reservation could not be allowed to exceed even in relation to the Scheme which was approved years prior to the said decision.

13. In the result, therefore, we do not find any substance in the grievance sought to be made by the petitioners and hence the petition is dismissed.

Rule is discharged with no order as to costs.

(R.M.S. KHANDEPARKAR, J.)

(NARESH H. PATIL, J.)